

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Rickey G. Shelby)	****Proposed****
7633 AL Highway 22 North)	
Valley Grande, Dallas County, Alabama)	ADMINISTRATIVE
)	ORDER NO: 16-__-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

1. Rickey Shelby (hereinafter, Shelby) owns and operates a tree service and a RV park located in Valley Grande, Dallas County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that "...open burning must take place on the property on which the combustible fuel originates."

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)2 states that "...open burning must be at least 500 feet from the nearest occupied dwelling other than a dwelling located on the property on which the burning is conducted.

6. On October 7, 2014, the Department received a complaint stating that Shelby's Tree Service was hauling material to Shelby's RV Park and burning it.

7. On November 11, 2014, the Department investigated the October 7, 2014 complaint and noted a large pile of limbs on a burn site located at the RV Park. It was also noted that there was a burn barrel where refuse had been burned near the shop located on Shelby's personal property. A warning notice and copy of the ADEM open burning regulations were left in the door of Shelby's business.

8. On June 3, 2016, the Department investigated another complaint regarding open burning being conducted on Shelby's property and noted evidence of a large burn area at Shelby's RV Park. Piles of large tree stumps and limbs surrounded the burn area and there were occupied dwellings within 500 feet of the burn site. The Department also noted that there was evidence of refuse being burned near the shop located on Shelby's personal property. A warning notice and a copy of the ADEM open burning regulations were left at Shelby's residence.

9. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and

degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Shelby has continued to illegally open burn imported vegetation on his property after being warned. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Shelby to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01(2)(b)1 and ADEM Admin. Code r. 335-3-3-.01(2)(b)2.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Shelby likely derived economic benefit by not legally disposing of imported trimmings and prohibited materials.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Shelby to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Shelby has been violating the State of Alabama Open Burning Regulations since at least October 2014.

F. THE ABILITY TO PAY: Shelby has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (*See* “Attachment A”, which is hereby incorporated into these Findings).

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Shelby shall pay to the Department a civil penalty in the amount of \$3,500.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environment Management by certified or cashier’s check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, Shelby shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01(2)(b)1 and ADEM Admin. Code r. 335-3-3-.01(2)(b)2.

C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve Shelby of his obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Shelby for the violations cited herein.

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Shelby for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2016.

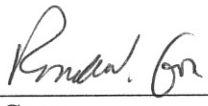
Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

PROPOSED ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Proposed Administrative Order upon the person(s) listed below by sending the same, postage paid, through the United States Mail **91 7108 2133 3936 7151 0422** with instructions to forward and return receipt, to:

Rickey G. Shelby
7633 AL Highway 22 North
Valley Grande, AL 36701

DONE this the 1st day of July, 2016.



Ronald W. Gore
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

Rickey G. Shelby
7633 AL Highway 22 North
Valley Grande, Dallas County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Burning imported vegetation	2	\$1,500	\$1,000	\$0	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$1,500</i>	<i>\$1,000</i>	<i>\$0</i>	<i>\$2,500</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$3,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$3,500.00

Footnotes

* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.